

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

**Theodore John Polczynski, Jr. and,
Diane K. Polczynski,
Debtors.**

**Case No. 22-21739-gmh
Chapter 11 Proceedings**

**NOTICE OF DEBTORS' MOTION FOR APPROVAL OF AN AGREEMENT
TO PROVIDE INCREASED ADEQUATE PROTECTION TO
SECURED CREDITOR JOHNSON BANK**

PLEASE TAKE NOTICE THAT Theodore John Polczynski, Jr. and Diane K. Polczynski (the "Debtors") have filed papers with the court seeking approval of an agreement to make increased adequate protection payments to Johnson Bank, a secured creditor in the above captioned case. A copy of the motion, stipulation, and proposed order are attached.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the motion, or if you want the court to consider your views on the motion, then on or before **February 9, 2023**, you or your attorney must file with the court a written objection explaining your position at:

Clerk, U.S. Bankruptcy Court
Eastern District of Wisconsin
517 East Wisconsin Avenue Room 133
Milwaukee, WI 53202

If you mail your objection to the court for filing, you must mail it early enough so the court will receive it before the date stated above. You must also provide a copy of your objection to Debtors' proposed attorneys at the address listed below.

If you, or your attorney, do not take these steps, the Court may decide that you do not oppose the motion and may enter an order approving it without further notice or a hearing.

Dated: January 23, 2023.

/s/ Averi A. Niemuth

Averi A. Niemuth
Kerkman & Dunn

Attorneys for the Debtors

P.O. Address:

839 N. Jefferson St., Suite 400
Milwaukee, WI 53202-3744
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In re:

**Theodore John Polczynski, Jr. and,
Diane K. Polczynski,**

**Case No. 22-21739-gmh
Chapter 11 Proceedings**

Debtors.

**MOTION FOR APPROVAL OF AN AGREEMENT TO PROVIDE
ADEQUATE PROTECTION TO SECURED CREDITOR JOHNSON BANK**

Theodore John Polczynski, Jr. and Diane K. Polczynski as debtors-in-possession (the “Debtor”) and Johnson Bank (the “Bank”) (Debtors and the Bank collectively, the “Parties”) move the Court pursuant to Fed. R. Bank. P. 4001(d) for approval of an agreement to provide adequate protection to the Bank. In support of its motion, the Debtors state as follows:

Jurisdiction

1. The Court has jurisdiction to hear this motion pursuant to 28 U.S.C. §§ 157(a) and 1334(a), and the order of reference filed in this district entered pursuant to 28 U.S.C. § 157(a).
2. Venue of this proceeding is in the District and before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

This matter is a core proceeding under 28 U.S.C. § 157(b)(1). It concerns the administration of the Debtor’s estate.

Factual Basis for Relief

3. On May 6, 2022, the Debtors filed a motion requesting authority to grant adequate protection to the Bank for continued use of real property located at 6917 Highway 83, Chenequa, WI (the “Property”). (Dkt. No. 20.)

4. The Debtors proposed to make monthly adequate protection payments of \$5,067.27 commencing on July 1, 2022. The proposed payments were for interest only at a rate of 3.5% using the value of \$1.2 million for the Property and included amounts for taxes and insurance.

5. Johnson Bank informed the Debtors that it would object to the proposed payments based on the amount not being enough for taxes or insurance.

6. On May 20, 2022, the Parties entered a stipulation wherein they agreed to adequate protection payments of \$5,558.60 commencing June 1, 2022. (Dkt. No. 31.)

7. On June 16, 2022, the Court entered an order approving the adequate protection payments. (Dkt. No. 51.)

8. On August 22, 2022, the Debtors filed their plan of reorganization, which was subsequently modified on October 13, 2022 (the “Plan”). (Dkt. Nos. 64, 80.)

9. The Plan proposes monthly payments to the Bank in the amount of \$9,470.79. (Dkt. No. 80, page 21, Addendum 1.)

Stipulation

10. The Parties have stipulated to increased adequate protection payments of \$9,470.79 commencing March 1, 2023 (the “Agreement”).

11. Pursuant to Fed. Bankr. R. 4001(d)(1), the Agreement and a proposed order reflecting the Parties’ stipulated terms accompany this motion.

12. The parties agree that the adequate protection payments under the Agreement will be applied in accordance with the terms of any future confirmed plan of reorganization.

Legal Basis for Relief

13. Pursuant to Rule 4001(d), a bankruptcy court may approve an agreement to provide adequate protection without the necessity of a hearing when sufficient notice and opportunity for a hearing have been given. Fed. R. Bankr. R. 4001(d)(3); *In re Housley*, Case No. 17-71908, 2018 WL 1005285, *5 (Bankr. C.D. Ill. 2018) (holding minimal notice and opportunity to be heard are required even when all parties are in agreement on a motion for adequate protection).

14. Adequate protection payments to a secured creditor are made to compensate for the decrease in value of the creditors' collateral caused by the debtor's use of the collateral during the pendency of the automatic stay. *Federal Nat. Mortg. Ass'n v. Dacon Boilingbrook Assocs. Ltd. P'ship.*, 153 B.R. 204 (Bankr. N.D. Ill. 1993) (citing *United States Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370 (1988)).

15. The Debtors submit that the Agreement is fair and equitable, and adequately compensates Johnson Bank for the decrease in value in the collateral caused by the Debtors' continued use. The Agreement is also in the best interests of the estate, its creditors, and itself as it resolves any disputes with Johnson Bank over adequate protection payments without incurring needless expenses to the estate associated with a contested hearing while also permitting the Debtors to continue using the Property. The Agreement will not harm competing interests because the Debtors are not surrendering or otherwise transferring any assets of the estate, and no creditors' claim is being impacted.

16. Pursuant to Fed. Bankr. R. 4001(d)(2), the Debtors are contemporaneously serving notice of this motion and the time for objections. If no objection is filed, the Debtors

respectfully ask this Court to enter an order approving the Agreement without conducting a hearing.

Conclusion

WHEREFORE, the Debtors request that the Court enter an order approving the agreement to provide increased adequate protection to Johnson Bank and grant other relief as is just.

Dated: January 23, 2023.

/s/ Averi A. Niemuth
Evan P. Schmit
Averi A. Niemuth
Kerkman & Dunn
Proposed Attorneys for the Debtors

P.O. Addresses:

839 N. Jefferson St., Suite 400
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN**

In re:

**Theodore John Polczynski, Jr. and,
Diane K. Polczynski,**

**Case No. 22-21739-gmh
Chapter 11 Proceedings**

Debtors.

**ORDER GRANTING MOTION FOR APPROVAL OF AN AGREEMENT TO PROVIDE
ADEQUATE PROTECTION TO SECURED CREDITOR JOHNSON BANK AND
MODIFICATION OF AUTOMATIC STAY**

On January 23, 2023, the Debtors filed a motion for approval of an agreement to provide increased adequate protection to Johnson Bank for its interest in real property located at 6917 Highway 83, Chenequa, Wisconsin (the “Property”) in the form of periodic cash payments. The Debtors’ counsel filed proof of service of a notice of the motion and the time to object to it as required by Federal Rule of Bankruptcy Procedure 4001(a)(1) & (d)(2). There were no objections. Based on the record, **IT IS ORDERED** that the Debtors’ motion is granted, and their agreement to provide Johnson Bank with adequate protection is approved, as follows:

Drafted by: Evan P. Schmit
Kerkman & Dunn
839 N. Jefferson, Suite 400
Milwaukee, WI 53202-3744
Phone: 414.277.8200
Facsimile: 414.277.0100
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1. The stay under 11 U.S.C. § 362(a) is modified to the extent necessary to give effect to the terms below.

2. The Debtors must pay \$9,470.79 (“Adequate Protection Payment”) to Johnson Bank on or before the first of the month beginning on March 1, 2023.

3. The Adequate Protection Payments will be applied in accordance with the terms of any future confirmed plan of reorganization.

4. This order is without prejudice to any right of any party in interest to request a determination of, or to dispute, the amount of Johnson Bank’s secured claim under 11 U.S.C. § 506(a).

5. This order is without prejudice to any right of Johnson Bank to object to or oppose confirmation of any plan proposed in, or to seek dismissal of, this case.

6. The Debtors’ failure to make an Adequate Protection Payment on or before the due date through the confirmation of a plan is a default of this order.

7. If Johnson Bank asserts that a default of this order has occurred, Johnson Bank must give written notice of the default to the Debtors and their counsel by electronic mail or facsimile. The Debtors may cure any such default but must do so by no later than five business days after both they and their counsel have received written notice of the default as herein required.

8. If the Debtors fail to cure a default within the time allowed by the previous paragraph, or if the Debtors otherwise fail to fully comply with this order, then Johnson Bank is entitled to relief from the stay under § 362(a) to the extent necessary to allow it to exercise its rights and remedies with respect to the Property under the governing documents and applicable nonbankruptcy law, but only after it files proof of the Debtors’ default and a proposed order granting it such relief and serves the same upon the Debtors and their counsel and the Court enters an order so providing.

9. This order is a Doomsday Order under the court’s Uniform Procedure for Doomsday Orders; it incorporates and is subject to the Uniform Procedure for Doomsday Orders.

10. The terms of this order are effective as of the date on which this order is entered until the Court confirms a plan, dismisses the case, grants Johnson Bank relief from the § 362(a) as or to the extent described in paragraph 7 above, or orders otherwise.

11. This order is effective immediately and is not stayed for 14 days pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) or any other equivalent rule that may apply.

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

**Theodore J. Polczynski, Jr. and
Diane K. Polczynski,**

**Case No. 22-21739-gmh
Chapter 11 Proceedings**

Joint-Debtors.

CERTIFICATE OF SERVICE

I hereby certify that I am older than 18 years of age, an employee of Kerkman & Dunn, and on January 23, 2023, I sent via U.S. Mail, first class, postage prepaid, the following documents to all interested parties on the attached notice list:

- **NOTICE OF DEBTORS' MOTION FOR APPROVAL OF AN AGREEMENT TO PROVIDE INCREASED ADEQUATE PROTECTION TO SECURED CREDITOR JOHNSON BANK**
- **STIPULATION ON ADEQUATE PROTECTION TO SECURED CREDITOR JOHNSON BANK**
- **MOTION FOR APPROVAL OF AN AGREEMENT TO PROVIDE ADEQUATE PROTECTION TO SECURED CREDITOR JOHNSON BANK**
- **ORDER GRANTING MOTION FOR APPROVAL OF AN AGREEMENT TO PROVIDE ADEQUATE PROTECTION TO SECURED CREDITOR JOHNSON BANK AND MODIFICATION OF AUTOMATIC STAY**

I declare under penalty perjury pursuant to 28 U.S.C. § 1746 that the statements above are true and correct to the best of my knowledge, information and belief.

Dated: January 23, 2023.

/s/Sarah W. Dwyer

Sarah W. Dwyer

P.O. Address:

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Label Matrix for local noticing
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Case 22-21739-gmh
Eastern District of Wisconsin
Milwaukee
Thu Jan 19 13:53:24 CST 2023

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Racine, WI 53408-1368

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1 E. Milwaukee Street
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819 N. 6th Street, #408
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